

REMARKS

Applicant submits this Amendment to accept and authorize the proposed Examiner's Amendment as suggested on October 23, 2009 and November 18, 2009. Specifically, Applicant submits the following details regarding the timeline of events to support the Applicant's understanding of the Amendments to the claims and request for entry:

- A. A Final Office Action dated May 19, 2009 was received
- B. On August 18, 2009, Applicant submitted an After-Final Amendment under 37 C.F.R. §1.116
- C. On August 19, 2009, Applicant submitted a Pre-Appeal Brief Request ("Request") and comments for review
- D. As of October 19, 2009, Applicant was still awaiting a response to the submitted comments in support of the Request submitted on August 19, 2009. Applicant's representative contacted the Examiner (C. Dexter) and Supervisory Patent Examiner (SPE)(B. Ashley) to discuss the status of this decision. Applicant's representative was informed by SPE Ashley that the Request was incorrectly entered at the USPTO (i.e., a fault by the USPTO and not the Applicant or Applicant's representative), and, therefore, they were unaware of it. The SPE informed the Applicant's representative that he would make sure it was entered, and that a conference would be held to consider the Request.
- E. On October 23, 2009, Applicant's representative was contacted via telephone by Examiner Dexter regarding the outcome of Request submitted on August 19, 2009. During the teleconference, the Examiner proposed an Examiner's Amendment to claim 13 so that claim 13 and its dependent claims 14-17 and 20 would be allowed. Specifically, the Examiner proposed the following amendments to claim 13:

"said fixed crosscutting tool arranged to exert a detaining force upon the workpiece; and
said damper unit constructed and arranged to brake the striking motion of said movable crosscutting tool;[[, and]]

wherein the tool housing has at least two supporting surfaces for positioning said movable crosscutting tool, said supporting surfaces being curved and having a same radius, wherein a piston access recess is constructed and arranged between said curved supporting surfaces to provide a space through which for movement of said striking piston moves therein"

He also proposed cancelling claims 18, 19, and 21 (or filing an Appeal for these claims).

F. On November 5, 2009, Applicant's representative held a teleconference with the Examiner accepting the proposed claim changes discussed during the teleconference of October 23, 2009 (i.e., amending claim 13 and cancelling 18, 19, and 21).

G. On November 13, 2009, Examiner Dexter faxed Applicant's representative a proposed Examiner's Amendment. The proposed Examiner's Amendment was accepted by Applicant's representative via teleconference on the same day.

H. Applicant's representative left detailed messages for the Examiner on November 17, 2009 and November 18, 2009 requesting that the proposed Examiner's Amendment faxed and confirmed on November 13, 2009 be entered. Applicant's representative noted that there was no indication in the USPTO's PAIR system that the Examiner's Amendment was entered, or that a Notice of Allowance was mailed. Applicant's representative also left a detailed message for SPE Ashley regarding the same.

I. On November 18, 2009, Examiner Dexter left a detailed message in response to Applicant's representative's messages. The Examiner's message included additional changes to claim 13, which are indicated in the claim amendments. In particular, the Examiner proposed further amending claim 13 to read "a striking unit comprising a striking piston supported and driven by a driving portion of the striking unit."

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the proposed claim amendments as suggested by the Examiner be entered, and that a Notice of Allowance for claims 13-17 and 20 is received.

If any point remains in issue which the Examiner feels may be best resolved through a personal or telephone interview, please contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975 (Reference Number 522208-0000024). The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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